

REMARKS

Claims 32-47 are pending in this application. Claims 32-47 have been added to more clearly recite the claimed invention. Support for the claims can be found in the specification as filed. Claims 1-31 have been canceled without prejudice. Applicants reserve the right to file one or more divisional or continuation applications directed to any canceled subject matter. No new matter has been added by the amendments.

I. Claim Objections

Claims 13 and 14 are objected to on page 2 of the office action for including parenthetical notations.

Applicants respectfully submit that they have canceled the claims thus obviating the rejection.

II. The Rejection Under 35 U.S.C. § 102(b) Should Be Withdrawn

Claims 13-18 and 31 are rejected on page 2 of the office action under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,993,867 to Rohdewald (“Rohdewald”)

Applicants respectfully submit that the claims have been canceled without prejudice thereby overcoming the rejection.

Applicants respectfully submit that new claims 32-47 encompass, *inter alia*, keeping the fresh tea leaf under shade conditions after collecting, allowing the fresh tea leaf to stand for 30 minutes to 72 hours, freeze-drying and subsequently milling the same. Moreover, claims 34, 37, 40, and 43 include the added step - followed by washing the resulting powder with acetone or ethanol. Applicants submit that Rohdewald does not disclose each and every element of the claimed invention, therefore Rohdewald cannot anticipate the pending claims.

See Celeritas Techs. Ltd. v. Rockwell Int'l Corp., 150 F.3d 1354, 1360 (Fed. Cir. 1998); *Standard Havens Prods., Inc. v. Gencor. Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991); *Jamesbury Corp. v. Litton Indus. Inc.*, 756 F.2d (Fed. Cir. 1985); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1 (Fed. Cir. 1984) (holding that prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art). There must be no difference between the claimed invention and the reference disclosure as viewed by one of ordinary skill in the art. *See Scripps Clinic & Research Found. v. Genentech, Inc.*, 927

F.2d 1565, 1576 (Fed. Cir. 1991); *Carella v. Starlight Archery Co.*, 804 F.2d 135, 138 (Fed. Cir. 1986); *RCA Corp. v. Applied Digital Data Sys.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984) (holding that anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference).

Applicants respectfully submit that based at least on the above arguments, the rejection of the claims under 35 U.S.C. § 102(b) should be reconsidered and withdrawn.

III. The Rejections Under 35 U.S.C. § 103(a) Should Be Withdrawn

Claims 19-28 are rejected on pages 2-4 of the office action under 35 U.S.C. § 103(a) as allegedly obvious over Rohdewald as applied to claims 13 and 14 above and further in view of U.S. patent number 3,911,145 to Marion (“Marion”).

Claims 29-30 are rejected on pages 4-5 of the office action under 35 U.S.C. § 103(a) as allegedly obvious over Rohdewald as applied to claims 13 and 14 above and further in view of Marion and U.S. patent number 5,306,486 to McCook (“McCook”).

Applicants respectfully submit that the claims have been canceled without prejudice thereby overcoming the rejection.

Applicants further submit that new claims 32-47 encompass, *inter alia*, keeping the fresh tea leaf under shade conditions after collecting, allowing the fresh tea leaf to stand for 30 minutes to 72 hours, freeze-drying and subsequently milling the same. In addition, claims 34, 37, 40, and 43 include the added step - followed by washing the resulting powder with acetone or ethanol. Applicants include a Declaration of Tadahiro Hiramoto Under 37 C.F.R. § 1.132 to support the nonobviousness of the claimed invention.

The U.S. Supreme Court has ruled in a unanimous opinion that a “narrow” and “rigid” TSM [teaching, suggestion, motivation] test is not the proper application of the non-obviousness doctrine of Section 103(a) of the Patent Act. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). According to the Supreme Court, “[t]o facilitate review, [the obviousness] analysis should be made explicit. But it need not seek out precise teachings directed to the challenged claim’s specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ.” The Court further elucidated, “[a] patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” “There is no

necessary inconsistency between the [teaching, suggestion, motivation] test and the Graham analysis. But a court errs where it transforms general principle into a rigid rule limiting the obviousness inquiry.” The Federal Circuit stated that the test for *prima facie* obviousness in an invention concerning chemical compounds “is consistent with the legal principles enunciated in *KSR*,” and thus, “in cases involving new chemical compounds, it remains necessary to identify some reason that would have led a chemist to modify a known compound in a particular manner to establish a *prima facie* obviousness of a new claimed compound.” *Takeda Chemical Industries, LTD et al. v. Alphapharm PTY., Ltd.*, 492 F.3d 1350 (Fed. Cir. 2007).

Applicants respectfully submit that the combination of Rohdewald and Marion and/or McCook does not render the new claims obvious.

Rohdewald does not disclose or suggest keeping the fresh tea leaf under shade conditions after collecting, allowing the fresh tea leaf to stand for 30 minutes to 72 hours, freeze-drying and subsequently milling the same. Nor does Rohdewald disclose or suggest subsequently washing the resulting powder with acetone or ethanol. Marion does not remedy the deficiencies of Rohdewald.

Rohdewald discloses minimizing the activity of phenol oxidases of fresh green tea leaves by cooling and simultaneously or immediately thereafter preventing the enzymatic reaction of the polyphenols by phenol oxidases by the removal of a water reaction medium. According to Rohdewald, fresh green tea leaves are cooled until the activity of the phenol oxidases contained therein has decreased to at most 1% of the activity of the fresh green tea leaves at ambient temperature and simultaneously or immediately thereafter the water effective as reaction medium is removed. Rohdewald further discloses cooling and water removal carried out simultaneously by lyophilisation (freeze drying). The freeze-dried, unfermented tea leaves are finely powdered in non-oxidizing atmosphere and subsequently packed, again with oxygen exclusion. Nitrogen and/or noble gas atmosphere is preferably used as non-oxidizing atmosphere. However, other atmosphere compositions can also be used provided that they exert no oxidizing action on the polyphenols.

Applicants point out, the claimed invention encompasses keeping the fresh tea leaf under shade conditions after collecting, allowing the fresh tea leaf to stand for 30 minutes to 72 hours, freeze-drying and subsequently milling the same, followed by washing the resulting

powder with acetone or ethanol. Indeed, it is not disclosed or suggested allowing the fresh tea leaf to stand for 30 minutes to 72 hours, freeze-drying and subsequently milling the same, followed by washing the resulting powder with acetone or ethanol. Moreover, the claimed invention encompasses enzymes, which are increased by keeping a fresh tea leaf and/or stem of tea plant *Camellian sinesis* under shade conditions followed by milling.

Marion is limited to a tea extract and an aromatic extract containing aromatic constituents of one or more of the following fruits: apricot, banana, apple, grape, date, plum and fig, in an amount below the perception threshold of the specific aroma of the fruit in a beverage reconstituted from the composition. (*See Marion at Abstract*). Indeed, Marion does not disclose the enrichment of flavor extracts and aroma to tea composition. The reference only teaches that the smell of chamomile is added to the smell of tea by adding the flavor to the tea composition. However, in the pending claims the tea leaf powder is used in order to enrich the original smell of the chamomile even more. For example, in the case of the apple as shown in Table 11 of the present specification, the original cider smell of the apple is enriched.

McCook discloses a cosmetic composition, which includes green tea and a sunscreen compound, which is effective to at least partially block ultraviolet radiation from harming human skin, and a pharmaceutically acceptable carrier.

Applicants respectfully submit that it would not be obvious to use fresh leaf to treat a tea extract and the like since it is difficult for the person of ordinary skill in the art to use a fresh tea leaf powder to treat tea leaf, vegetable, fruit, or flower to obtain the treated products. Moreover, it is difficult for the person of ordinary skill in the art to adjust the fresh tea leaf powder as recited by the claims. Therefore, the invention encompassed by claims has produced unexpected technical effects.

Applicants respectfully submit that based on at least the above arguments, the rejection of claims 19-28 under 35 U.S.C. § 103(a) as allegedly obvious over Rohdewald in view of Marion should be reconsidered and withdrawn.

Applicants further submit that based on at least the above arguments, the rejection of claims 29 and 30 under 35 U.S.C. § 103(a) as allegedly obvious over Rohdewald in view of Marion and McCook should be reconsidered and withdrawn.

IV. Conclusions

It is respectfully submitted that the rejections to the claims have been overcome. Should the Examiner disagree, Applicant respectfully requests a telephonic or in-person interview with the undersigned attorney to discuss any remaining issues and to expedite the eventual allowance of the claims.

Except for issues payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310.

Dated: **June 18, 2009**
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Respectfully submitted,
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